LIM SEONG CHOON & ANOR.

v.

R. RAYARATNAM

HIGH COURT MALAYA, PENANG
MOHAMED DZAIDDIN J
[CIVIL APPEAL NO. 11-4-87]
11 APRIL 1990

TORT: *Negligence - Remedies - Special damages - Depreciation in market value of damaged vehicle - Interest rate payable on special damages.*

The car driven by the second defendant, the servant or agent of the first defendant was involved in a collision with the plaintiff's car due to the second defendant's negligence. The plaintiff claimed a sum of RM1,000 for depreciation as a result of damage to his car.

The Magistrate gave judgment for the plaintiff and awarded interest on special damages at 8% per annum from the date of accident to the date of realisation.

The defendants appealed to the High Court against the Magistrate's decision.

Held:

[1] The diminution in market value must be proved by evidence of the kind usually called when diminution in market value is sought to be proved as a head of damage.

[2]The adjuster's report assessing the estimated cost of repair submitted to the insurance company is not sufficient evidence to show the loss of the market value of the car.

[3] Special damages may be fairly averaged out at half the usual rate of interest from the date of the accident to the date of judgment. Since the conventional interest rate is 8% per annum, the correct rate payable is 4% per annum from the date of accident to the date of judgment and thereafter the plaintiff would be entitled to 8% per annum interest until realisation.

[Appeal allowed.]

Cases referred to:

Admiralty Comrs. v. SS Susquehanna [1926] AC 655
Payton v. Brooks [1974] 1 LLR 241
Jefford v. Gee [1970] 1 All ER 1202

For the appellants - P.R. Manecksha; M/s. V.P. Nathan & Partners
For the respondent - M. Thayalan; M/s. Mohideen & Asamaley

JUDGMENT

Mohamed Dzaiddin J:

On 27 June 1984 the plaintiff's car was damaged in a collision with a car driven by the 2nd defendant, the servant or agent of the 1st defendant. The plaintiff issued the summons in the Magistrate's Court on 16 December 1985 claiming only for special damages against both defendants on account of the 2nd defendant's negligence. Under the "particulars of special damages" the plaintiff claimed, *inter alia*, a sum of RM1,000 for depreciation. On 6 January 1987, the learned Magistrate found the defendants wholly to blame and gave judgment for

the plaintiff as prayed, including the sum of RM1,000 for depreciation. She also awarded interest on special damages at 8% per annum from the date of accident to the date of realisation.

The defendants, being dissatisfied with the decision of the learned Magistrate appealed to this Court against the award of RM1,000 for depreciation and interest on special damages assessed at 8% per annum from date of accident to the date of realisation. I allowed this appeal on both grounds with costs.

On the first ground, one can assume that what the plaintiff means by depreciation in his statement of claim is the diminution in value of his car as a result of the damage due to the collision. It is a well settled principle that the onus is on the plaintiff to prove special damages strictly. In *Admiralty Comrs v. SS Susquehanna* [1926] AC 655 at 661 Viscount Dunedin stated:

> If there be any special damage which is attributable to the wrongful act, that special damage must be averred and proved and, if proved, will be awarded.

Now, what was the evidence before the Magistrate on the question of diminution of value? The plaintiff, an engineer, testified that his car was wholly damaged as a result of the accident. His repairer had to get spare parts from Ipoh. He himself had to do further repairs and had to change the absorber. Based on the plaintiff's evidence, coupled with the adjuster's report, the learned Magistrate in giving her reason for the award concluded that "tiap-tiap kereta yang mengalami kerosakan akibat kemalangan akan jatuh nilainya kerana keadaan kereta itu tidak sama lagi seperti sebelum kemalangan berlaku." (that every car which was damaged after an accident would lose its value because the condition of the said car would no longer be the same as before the accident.)

In *Payton v. Brooks* [1974] 1 LLR 241 CA the plaintiff's car, only four weeks old was damaged by the defendant. He claimed from her not only the cost of repairs but also a sum of 100 pounds being the estimated loss of market value of the car, even after repair due to it being a repaired car. The trial Judge awarded only the cost of repair, finding on the evidence that no diminution in market value had been established by the plaintiff. On appeal, it was held that the Judge's finding of fact must be accepted, but an *obiter*, if the Judge had found that the diminution in value had been established the plaintiff would have been entitled to an award. The Court of Appeal went on to state that the normal measure of damages is the cost of repair but if, despite good repairs, the reduced market value can be proved, compensation for the reduction can be awarded to the plaintiff, the value of his property as a saleable asset having been reduced.

Following *Payton v. Brooks*, I am satisfied that the learned Magistrate had erred in law in awarding the plaintiff RM1,000 for the depreciation. Granted that the plaintiff can recover under special damage for diminution in value, yet, in my opinion, it is essential the appropriate evidence be called to prove it. Here, I find there was scanty and insufficient evidence for the learned Magistrate to make her finding. First, there was no evidence whether the car was a fairly new or an old car. Secondly, it was not enough for her to rely on the adjuster's report, which was a report submitted to the insurance company for the purpose of assessing the estimated cost of repair of the said vehicle, as a basis for arriving at the loss of the market value of the said car. Further it is sheer guess work for her to award RM1,000 as compensation for the reduction in value of the said car. Thus, on the question of evidence and the burden of proof required, for my part, I would follow and adopt the decision of Roskill LJ at p. 245:

In a case where the evidence justifies a finding that there has been, on top of the cost of repairs, some diminution in market value - or, to put the point another way, justifies the conclusion that the loss to the plaintiff has not been fully compensated by the receipt of the cost of complete and adequate repairs, because of a resultant diminution in market value - I can see no reason why the plaintiff should be deprived of recovery under the head of damage also.

I would only add one word of caution. This conclusion is not a charter under which infuriated plaintiffs, who have the misfortune to have their cars damaged by careless drivers, acquire an unfettered right to recover diminution of value in every case in addition to the cost of repairs. *It is essential in such a case,* in my judgment, *for appropriate evidence to be called to prove diminution in value. I do not think in the ordinary case the burden of proof which rests on the plaintiff would be discharged merely by calling an individual to prove his idiosyncratic view of the particular loss in a particular case. The diminution in market value must be proved by appropriate evidence of the kind usually called when diminution in market value is sought to be proved as a head of damage.* Subject to that qualification, it seems to me that this head of damage is recoverable. (The emphasis is mine.)

On the question of interest on special damages, it has been clearly established in *Jefford v. Gee* [1970] 1 All ER 1202, which has been piously followed by our Courts that special damages may be fairly averaged out at half the usual rate of interest from the date of the accident to the date of judgment. As the conventional rate of interest permitted by our Courts is 8% per annum, the correct rate payable on special damages must be at 4% and not 8% per annum from date of accident until date of judgment and only thereafter would he be entitled to 8% per annum until realisation.

The deposit paid for this appeal shall be refunded to the defendants.

Also found at [1990] 2 CLJ 427